

**From:** s38(1)(b)  
**Sent:** 24 January 2019 09:24  
**To:**  
**Cc:** s38(1)(b)  
s38(1)(b)  
**Subject:** RE: North Banchory Co Limited - Release of Standard Security.

Good morning s38(1)(b)

Many thanks for confirming that the standard security can be discharged.

I have spoken to s38(1)(b) this morning, and he will ask our solicitors to provide the discharge for signing.

Kind regards

s38(1)(b)

**Finance Director**



s38(1)(b)

**Group Head Office:** Banchory Business Centre, Burn O'Bennie Road, Banchory, Aberdeenshire, AB31 5ZU  
**Group Companies:** North Banchory Company Ltd, Leys Estate,

HoBESCo Ltd, Inchmarlo Land Company Ltd

**From:** s38(1)(b)  
**Sent:** 24 January 2019 09:07  
**To:**  
**Cc:** s38(1)(b)  
s38(1)(b)  
**Subject:** RE: North Banchory Co Limited - Release of Standard Security.

Good morning s38(1)(b)

I can confirm that you have provided evidence that the development was completed during 2017 and SE Legal has confirmed as such the standard security can be discharged as any sums due will now be prescribed.

Therefore can you please provide a discharge of the security for signing.

I look forward to hearing from you.

Regards.

s38(1)(b)

**From:** s38(1)(b)  
**Sent:** 22 January 2019 18:21  
**To:**  
**Cc:** s38(1)(b)  
s38(1)(b)  
**Subject:** FW: North Banchory Co Limited - Release of Standard Security.

s38(1)(b)

Are you able to come back to us on this matter?

Kind regards

s38(1)(b)

**Finance Director**



s38(1)(b)

**Group Head Office:** Banchory Business Centre, Burn O'Bennie Road, Banchory, Aberdeenshire, AB31 5ZU  
**Group Companies:** North Banchory Company Ltd, Leys Estate,

HoBESCo Ltd, Inchmarlo Land Company Ltd

**From:** s38(1)(b)  
**Sent:** 07 January 2019 13:48  
**To:** s36(2)  
**Subject:** RE: North Banchory Co Limited - Release of Standard Security.

Good afternoon s38(1)(b)

Thank you very much for your detailed email with attachments.

I'll now discuss internally and will revert back to you.

Regards.

s38(1)(b)

**From:** s38(1)(b)  
**Sent:** 07 January 2019 11:45  
**To:**  
**Cc:** s38(1)(b)  
s38(1)(b)  
**Subject:** RE: North Banchory Co Limited - Release of Standard Security.

Good morning s38(1)(b)

The role of the architect in connection with Phase 2 of the development was to apply for and obtain planning and building warrant consents only.

At the time that these works were being completed the company had engaged Strutt & Parker as Letting and Property Managers for Banchory Business Centre. Accordingly, the building works in question were being supervised by s38(1)(b) of Strutt & Parker.

The definition of 'Completion Date' in the grant offer is "the date on which the Company's Consultant certifies that the Building Works are practically complete". The definition does not stipulate the form that the certification should take, e.g. statement of practical completion from architect or acceptance of completion certificate from local authority, etc.

In our case, the Company's Consultant was s38(1)(b) of Strutt & Parker, and the certification took the form of s38(1)(b) approving the final account invoice, as attached.

Whilst s38(1)(b) did not date the invoice at the time that s38(1)(b) certified that the works were complete by approving the invoice, this would have been certified shortly after being issued on 27 August 2007 by Banchory Contractors. All of the backup attached to the invoice supports the fact that the works were completed well ahead of the date that the invoice was raised.

We would also note that:

- as already provided and reattached, the Tenancy Schedule for Banchory Business Centre as at 31 August 2007 demonstrates that, apart from 2 offices in Wing F3, each of the 8 wings (4 ground floor and 4 first floor) were occupied. If the works had not been completed, the offices could not have been occupied;
- as previously advised, this Tenancy Schedule was provided to your s38(1)(b) on 20 February 2013. This was provided to s38(1)(b) following s38(1)(b) of your Legal Team at that time, accepting in late 2012 that August 2007 was the completion date of the development to be used in the assessment of any 'profit sharing';
- we are in possession of a letter from Ledingham Chalmers dated 27 July 2007, copy attached, in which it is stated that Scottish Enterprise were in discussions with the company in respect of the possibility of any clawback in accordance with Clause 6.3 of the grant offer. It is unlikely that such discussions would have commenced unless Scottish Enterprise were content that the completion date had been established in accordance with Clause 6.3, albeit it appears that there was no conclusion reached by these discussions at that time;
- as referred to above, further discussions and dialogue took place between Scottish Enterprise and the company between November 2012 and early October 2013. These discussions and dialogue culminated in various financial information being provided to Scottish Enterprise on 2 October 2013 as requested. The receipt of this information was acknowledged by s38(1)(b) of your Finance Team at that time, on 4 October 2013. s38(1)(b) acknowledged that she was to review the information provided and advised she would come back to us in November 2013. To this day, well over 5 years later, we have had no feedback on this, with discussions and dialogue only commencing again in February 2018 instigated by s38(1)(b) looking to progress with a land sale on behalf of the company.

Based on the foregoing, the company's position remains as set out in our letter dated 5 September 2018, copy attached, in that, in terms of section 6 of the Prescription and Limitation (Scotland) Act 1973, your claim for repayment of the grant prescribed 5 years from the date the obligation to repay arose i.e. August 2012. You therefore had until August 2017 to protect any claim to repayment by raising a court action (or other formal action). As Scottish Enterprise failed to do this, any claim has

now prescribed, and on that basis we ask that Scottish Enterprise grants a discharge of the Standard Security.

We look forward to receiving confirmation from Scottish Enterprise that a discharge of the Standard Security will be granted without undue delay as this matter continues to delay development on the business park over which security is currently held.

s33(1)(b)

This continued delay from Scottish Enterprise in accepting the position and discharging the security appears contradictory to one of its own objectives of "Supporting Scottish businesses to achieve their goals".

Please note this email is written without prejudice to the whole rights and pleas of North Banchory Company Limited and is not to be founded upon nor referred to in any ensuing process or litigation without the express written consent of North Banchory Company Limited.

Kind regards

s38(1)(b)

**Finance Director**



HoBESCo Ltd, Inchmarlo Land Company Ltd



s36(2)

**Group Head Office:** Banchory Business Centre, Burn O'Bennie Road, Banchory, Aberdeenshire, AB31 5ZU

**Group Companies:** North Banchory Company Ltd, Leys Estate,

**From:** s38(1)(b)  
**Sent:** 07 January 2019 09:33  
**To:**  
**Cc:** s38(1)(b)  
**Subject:** RE: North Banchory Co Limited - Release of Standard Security.

Good morning.

Have you been able to obtain a copy of the architect's Completion Certificate or any other official documentation that confirms the completion date of the building.

I look forward to hearing from you.

Regards.

s38(1)(b)

**From:** s38(1)(b)  
**Sent:** 26 November 2018 10:53  
**To:**  
**Cc:** s38(1)(b)  
**Subject:** RE: North Banchory Co Limited - Release of Standard Security.

Good morning.

Have you been able to obtain a copy of the architect's Completion Certificate.

I look forward to hearing from you.

Regards.

s38(1)(b)

**From:** s38(1)(b)

**Sent:** 02 November 2018 09:11

**To:**

**Cc:** s38(1)(b)

s38(1)(b)

**Subject:** RE: North Banchory Co Limited - Release of Standard Security.

Good morning s38(1)(b)

Thank you for the documentation that sent. Following discussions with my colleagues I've been asked to obtain a copy of the official Completion Certificate from the project architect or from the Local Authority. Can you please arrange for the Completion Certificate to be forwarded.

Thanking you in anticipation.

Regards.

s38(1)(b)

**From:** s38(1)(b)

**Sent:** 15 October 2018 17:31

**To:**

**Cc:** s38(1)(b)

s38(1)(b)

**Subject:** RE: North Banchory Co Limited - Release of Standard Security.

s38(1)(b)

In response to your email below, we attach:

- Tenancy Schedule for Banchory Business Centre as at 31 August 2007. These details were previously provided to your s38(1)(b) on 20 February 2013, and demonstrate that, apart from 2 offices in Wing F3, each of the 8 wings (4 ground floor and 4 first floor) were occupied; and
- Final Account invoice from Banchory Contractors dated 27 August 2007 for the fit out works of Wing G4, which was the last of the 8 wings to be fitted out.

We trust you find the attached to be satisfactory and look forward to hearing from you.